



THE LAW OFFICE OF  
AVRAM E. FRISCH LLC

Mailing Address  
P. O. Box 435  
Teaneck, NJ 07666

New Jersey Office  
1 University Plaza  
Suite 119  
Hackensack, NJ 07601

New York Office  
150 Broadway  
Suite 900  
New York, NY 10038

August 7, 2018

Hon. Victor A. Marrero  
United States District Court for the Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

**Via Fedex**

Re: Metro Woodworking, Inc. v. Samson Management LLC, et al., 1:18-cv-05411-VM

Dear Judge Marerro:

This firm represents Metro Woodworking, Inc. I write in response to the Defendants' letter seeking dismissal of the action for failure to comply with New York Business Corporation Law § 1312 and Defendants' prior claim that a previous New York State Supreme Court action between the parties was still pending.

In regard to the pendency of the New York action, in the weeks since our conference call, Judge Lynn Kotler issued an order denying Defendants' motion to dismiss that action as moot due to the voluntary discontinuance of the action. A copy of this Order is annexed hereto as **Exhibit A**.

In regard to Defendants' arguments regarding BCL § 1312(a), Defendants claims are incorrect, and largely rest on spurious aspersions on the character of Mr. Commander, Plaintiff's president. These irrelevant and unfair accusations would alone prove that a motion to dismiss is inappropriate, but the matter is anyway now moot. Plaintiff's authority to do business in New York has been reinstated. So while Plaintiff is not required to file for authority to do business, it has now obtained said authority. Annexed hereto as **Exhibit B** is the consent of the New York State Department of Taxation to reinstatement of Plaintiff's authority to do business. Annexed hereto as **Exhibit C** is Plaintiff's filing receipt for the filing of the reinstatement. Annexed hereto as **Exhibit D**

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Hon. Victor A. Marrero

is a printout of the New York Department of State website listing Plaintiff as currently active.

Plaintiff has already set forth its arguments as to why it was not required to be authorized to do business, and does not need to reiterate those points here. In the interest of avoiding any doubt, Plaintiff decided to seek reinstatement of its authority to do business when Defendants tried to raise this issue. Contrary to the assertions of Defendants, authority to do business does not obligate a foreign corporation to pay any New York State taxes, and the reinstatement occurred with no taxes being paid. The dissolution was solely due to a clerical error in regard to required annual filings with the Department of Taxation.

It is settled law that a foreign corporation barred from commencing an action by BCL § 1312 may cure this defect by subsequently obtaining authority. “[T]he more appropriate remedy was not outright dismissal of the complaint, but a conditional dismissal or a stay affording plaintiff an opportunity to cure this nonjurisdictional defect, i.e., to obtain the requisite authority.” *Tri-Terminal Corp. v. CITC Industries, Inc.*, 432 N.Y.S.2d 184, 185, 78 A.D.2d 609 (1<sup>st</sup> Dept. 1980). *See also Bancorp v Pompee*, 82 AD3d 935, 936 (2d Dept 2011). Numerous district courts have recognized that this is the controlling law in New York State as well. “A corporation with no authority to conduct business in New York may obtain such authority after it has already commenced an action and thereby become qualified to maintain that action.” *Nasso v. Seagal*, 263 F. Supp. 2d 596, 606 (E.D.N.Y. 2003) citing *Jaisan, Inc. v. Sullivan*, 178 F.R.D. 412, 414 (S.D.N.Y. 1998)

As Defendants’ application is now clearly moot, it should be directed to file an answer forthwith so that Plaintiff can proceed to the merits of this matter, which are clearly in its favor, and explain why the Defendants are so desirous of avoiding them (including their obnoxious and irrelevant smearing of Mr. Commander’s character).

Very truly yours,



Avram E. Frisch

Cc: Jonathan Ozarow, Esq. (via email)



## EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER  
J.S.C.

PART 8

Index Number : 151931/2018  
METRO WOODWORKING INC.  
vs  
SAMSON MANAGEMENT, LLC  
Sequence Number : 001  
DISMISS ACTION

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is *denied as moot.*

*Action discontinued.*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

Dated: 6/27/18

  
HON. LYNN R. KOTLER  
J.S.C.

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☒ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

## EXHIBIT B

**New York State Department of  
Taxation and Finance**

Office of Processing and Taxpayer Services  
Taxpayer Contact Center - Corporation Tax Services  
W A Harriman Campus  
Albany NY 12227

METRO WOODWORKING INC.  
5 CORNELL PKWY  
SPRINGFIELD, NJ, 07081-3514

Reference number:

Corporation name:

**We've granted your request for a *Consent to Reinstatement*.**

The Commissioner of Taxation and Finance consents to the reinstatement of the corporation named above. A copy of the *Consent to Reinstatement*, either Form TR-56 (for domestic corporations) or Form TR-57 (for foreign corporations) is enclosed.

**What to do next**

To complete the reinstatement process, use the address below to file the following materials with the New York Department of State:

- Forward the enclosed *Consent to Reinstatement*
- filing fee of \$55, payable to the **New York Department of State**

**NEW YORK DEPARTMENT OF STATE  
BUREAU OF CORPORATIONS  
ONE COMMERCE PLAZA  
99 WASHINGTON AVENUE  
ALBANY NY 12231**

The reinstatement is not final and complete until the Department of State processes the material you submit. At that time, the Department will send you a receipt.

**Questions?**

Call the Corporation Tax Information Center: (518) 485-6027

TR-57 (11/14)

**To the honorable Secretary of State  
of the State of New York:**

Please take notice that pursuant to the provisions of section 203-b of the Tax Law, as amended, the Commissioner of Taxation and Finance of the State of New York does hereby certify that

METRO WOODWORKING INC.  
METROPOLITAN WOODWORK NY (FICT)

a foreign corporation authorized to do business under the laws of the State of New York on the date of 04/12/2011, and heretofore authority to do business annulled published on 08/31/2016, pursuant to the provisions of section 203-b of the Tax Law, has paid all franchise taxes, penalties, and interest charges accrued against it.

In witness whereof, the Commissioner of Taxation  
and Finance has caused this certificate to be executed  
and the official seal of the Department of Taxation and Finance  
of the State of New York affixed hereto  
this twenty-fifth day of July  
Two-thousand Eighteen.



Commissioner of

Taxation and Finance

By

Deputy Commissioner

TR-57 (11/14) (back)

**Instructions**

This certificate must be filed with the Department of State.

The fee of the Secretary of State for filing this certificate is \$55.00. If it is filed later than three months after the date of publication of the proclamation, the Secretary of State will collect an additional sum equal to one-fortieth of one percent of all shares with par value and two and one-half cents for every share without par value that the company was authorized to have at the time of publication.

of the Annulment of the Annulment of Authority of METRO WOODWORKING INC.METROPOLITAN WOODWORK NY (FICT) Pursuant to the provisions of section 203-b	<b>Certificate of  Payment of Taxes</b>	METROPOLITAN WOODWORK NY <b>5 CORNELL PKWY  SPRINGFIELD, NJ, 07081-3514</b>
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## EXHIBIT C

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

=====

ENTITY NAME: METRO WOODWORKING INC.

DOCUMENT TYPE: CANCEL ANNUL. OF AUTH. (FOR./BUS/FICT.)

COUNTY: RICH

=====

FILED:08/01/2018 DURATION:\*\*\*\*\* CASH#:180801000003 FILM #:180801000004

FILER:

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METROPOLITAN WOODWORK NY  
5 CORNELL PKWY

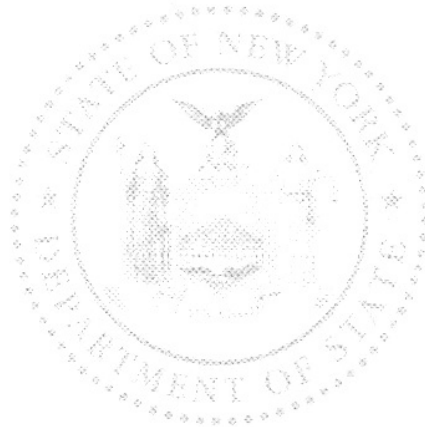
SPRINGFIELD, NJ 07081-3514

ADDRESS FOR PROCESS:

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REGISTERED AGENT:

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SERVICE COMPANY: \*\* NO SERVICE COMPANY \*\*

SERVICE CODE: 00

FEES	50.00
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FILING	50.00
TAX	0.00
CERT	0.00
COPIES	0.00
HANDLING	0.00

PAYMENTS	55.00
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CASH	0.00
CHECK	55.00
CHARGE	0.00
DRAWDOWN	0.00
OPAL	0.00
REFUND	0.00

=====

DOS-1025 (04/2007)

## EXHIBIT D

# NYS Department of State

## Division of Corporations

### Entity Information

The information contained in this database is current through August 6, 2018.

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Selected Entity Name: METRO WOODWORKING INC.

Selected Entity Status Information

**Current Entity Name:** METRO WOODWORKING INC.

**DOS ID #:** 4080231

**Initial DOS Filing Date:** APRIL 12, 2011

**County:** RICHMOND

**Jurisdiction:** NEVADA

**Entity Type:** FOREIGN BUSINESS CORPORATION

**Current Entity Status:** ACTIVE

Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

INCorp SERVICES, INC.

ONE COMMERCE PLAZA

99 WASHINGTON AVE SUITE 805-A

ALBANY, NEW YORK, 12210-2822

**Chief Executive Officer**

LEAH GARTENBAUM

601 LEHIGH AVENUE

UNION, NEW JERSEY, 07083

**Principal Executive Office**

METRO WOODWORKING INC.

601 LEHIGH AVENUE

UNION, NEW JERSEY, 07083

**Registered Agent**

NONE

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by [viewing the certificate](#).

#### **\*Stock Information**

<b># of Shares</b>	<b>Type of Stock</b>	<b>\$ Value per Share</b>
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No Information Available

\*Stock information is applicable to domestic business corporations.

#### **Name History**

<b>Filing Date</b>	<b>Name Type</b>	<b>Entity Name</b>
APR 12, 2011	Fictitious	METROPOLITAN WOODWORK NY
APR 12, 2011	Actual	METRO WOODWORKING INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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